Citizens Advisory Committee
TO THE CHESAPEAKE EXECUTIVE COUNCIL

November 8, 2010

Water Docket
Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Re: Docket Number EPA-R03-OW-2010-0736

The Citizens Advisory Committee (CAC) to the Executive Council (EC) of the Chesapeake Bay Program (CBP) appreciates the opportunity to submit our comments and ideas for accelerating implementation, citizen engagement, and accountability in the Environmental Protection Agency's (EPA) Chesapeake Bay restoration effort as proposed in EPA's draft Chesapeake Bay Total Daily Maximum Load (TMDL).

The Citizens Advisory Committee is a broad based citizens' organization comprised of volunteer representatives from agriculture, business, conservation, industry, non-profit, faith-based, and civic groups across the watershed. Since it was first established in 1984, CAC has provided advice and assistance to the region's Governors, EPA and EC of the CBP in implementing Chesapeake Bay restoration. CAC provides a non-governmental perspective on the Bay Program restoration efforts and on how Bay Program policies affect citizens who live, work and play in the Chesapeake region.

CAC has been actively participating in Bay watershed restoration for 26 years. We have been an active contributor in the development of this historic voluntary program which produced or helped facilitate three Executive Council Chesapeake Bay Agreements; over 45 EC Directives, Agreements, and Strategies; revisions of water quality standards for the Bay; Bay Tributary Strategies; 2003 Bay waste load and load allocations; and two-year milestones. We acknowledge the progress made, but are eager to begin this new era of accelerated progress and accountability. We are eager to experience clean water and healthy environments in our communities.

First, **we strongly support the Bay TMDL**, the 2025 deadline and the Watershed Implementation Plans (WIPs). Sadly, too many Bay Agreements have not been honored and "deadlines" have come and gone without significant improvement to the Bay. The time to act is upon us and we applaud EPA's efforts to accelerate Bay Restoration through the TMDL. We recognize the Chesapeake Bay Program is in flux with the TMDL process and President Obama's Executive Order, so we appreciate that EPA is holding the CBP partnership accountable to the past Principals' Staff Committee decision to accelerate the TMDL. While we acknowledge the difficult economic times, every year that we continue to

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delay the hard political choices necessary to clean up the Bay we, in effect, ensure that the next generation will inherit the ever rising costs of clean-up and effectively lessen our ability to restore the Bay. This is why we think it is important to get the TMDLs and the WIPs in place now.

Second, CAC strongly supports enforcement and verification as key elements of the WIPs. The WIPs are a crucial complement to the Bay TMDL in allowing the jurisdictions to use their unique economies, cultures, regulatory authorities, and political structures to demonstrate how they will achieve their non-point source load allocations. The WIPs for the TMDLs must be enforceable *and* enforced. We believe Maryland's requirement to publish an annual report on the Department of Environment's compliance and enforcement activities is a good model that other jurisdictions should enact through legislation. CAC would be pleased to serve as a "focus group" for MDE to test the ability of citizens to use the reported information. Additionally, EPA may consider using Clean Water Act 319 grant funds to match state funds for contracting third party verifications and technical support to the agriculture community. **EPA may consider this type of enforcement reporting and verification mechanisms as levels of reasonable assurance and these types of reporting activities would be excellent avenues for citizen engagement and accountability.**

Third, **the threat of backstops alone will be insufficient- More creative thinking about motivating state action is necessary.** While we support the EPA in utilizing the backstop approach if necessary to supplement a lack of reasonable assurance in state actions, we think the draft TMDL needs to be more creative in motivating states to control pollution from non-point sources. The implicit threat of increasingly stringent federal "backstop" regulation of point source pollution to compensate for state inaction on non-point source pollution may not motivate all the states to seriously address non-point source pollution in the long run. From a cost-benefit perspective, it is inefficient to try to meet TMDL limits primarily by regulating point sources that experience diminishing marginal returns on pollution abatement. The political reality is that regulating non-point pollution sources personally involves far more people/voters in their daily lives, forcing behavioral changes or extracting a cost for not changing. The potential benefit for these affected people/voters is obscured by the framing of the TMDL as a plan for the health of the often geographically distant Bay, rather than the whole watershed and its numerous streams. From the deficiencies of most state WIPs and the absence of specificity on actions, it is likely that some elected leaders will not embark on a program of seemingly all cost and no benefit for their constituents. Blaming the EPA for more stringent regulations on point source polluters could be the preferred option.

Therefore, point source backstops alone will likely be insufficient to clean-up the watershed. The federal agencies should explore ways to tie federal assistance to the states in the Chesapeake Bay watershed for the very activities that produce the nutrient and sediment loads, like, agriculture subsidies and highway construction, to state progress on regulating non-point source pollution.

Unless more creative means to motivate state regulation of non-point source pollution are found, EPA will have to put a disproportionate amount of regulations on permitted point sources, which will be highly motivated to resist bearing the unbalanced burden of reducing nutrient and sediment pollution in the watershed. Concentrated costs in a relatively small group of actors could cause political push-back against the regulations. Progress on improving the water quality of the Bay under these circumstances would require sustained political support from the White House for decades (an unlikely scenario) and unfairly saddle many point sources with additional reductions that are not as cost-effective compared to

Fourth, we recognize that a watershed-wide nutrient trading program has the potential to improve the cost effectiveness of meeting the nutrient and sediment reductions. As mentioned above we strongly support third party verification of non-permitted practices as one means to ensure reductions from nonpoint sources are realized. Verification/validation of real nutrient reductions will be critical to a successful trading program and stable market that protects both trading parties. The Chesapeake Bay Program partners should be very open and thoughtful on how to proceed with a nutrient trading program. **We recommend there be serious discussions about how a trading program in the watershed can be effective, coordinated regionally and ensure strong elements of accountability and verification.**

Fifth, CAC recognizes that there are questions regarding the model, particularly in under-counting non-point source best management practices (BMPs). However, it is unlikely that a refined model that includes more non-point source BMPs will result in significant changes in the TMDL. Progress on meeting the water quality goals is still measured by water quality monitoring data from the tributaries and the Bay and thus we recommend **more testing in more locations**. Water quality can vary significantly between nearby areas. More monitoring stations will help alleviate some stakeholders' concerns that the TMDL is solely driven by a flawed model versus measured water quality data that shows which segments/tributaries are not meeting water quality standards. A better understanding of sources and sites of major pollution will help the partners to target limited restoration funds and achieve larger gains in meeting water quality standards throughout the watershed. This will be critical to the development and enforcement of the Phase II WIPs. Additionally, more monitoring data will provide a better understanding of the climate change impacts affecting the health of the Bay.

Sixth, **current and projected climate change impacts on the Chesapeake Bay must be integrated into the TMDL for nutrients and sediment.** Draft Appendix E states that "*The potential effects of climate change have not been explicitly accounted for in the current Chesapeake Bay TMDL allocations*," despite the commendable efforts described in the Appendix to model potential climate change impacts. It is almost inconceivable that changes in water temperature ("*in the Chesapeake Bay watershed, the 2030 estimated temperatures are about 1.5 degrees centigrade higher over the current temperatures*"), stream flow rates, precipitation, et cetera will have no net impact on the health of the Bay. Climate change impacts on the Chesapeake Bay watershed undermine assumptions used in watershed modeling, such as the time series data that were used to develop the TMDL for nutrients and sediment. Though complicated, these impacts must be incorporated into the TMDL and from a rational risk-management perspective, greater variability and uncertainty in the modeling demands a more stringent TMDL regime to reduce the risk of having an unhealthy Bay in the future. If climate change impacts are an additional stressor on the Bay's health, other stressors, such as the nutrient and sediment loads may need further reductions to compensate. The sooner the citizens and stakeholders know this, the better.

Lastly, we are deeply committed to preserving healthy agriculture in our communities. Rural landscapes are integral to the fabric of our region's culture. Just as clean water is important to healthy communities, so are healthy, local food sources. We believe responsible agricultural practices are good land uses. The states have the lead in designing their WIPs to accommodate agricultural viability and responsible farming practices. However, **we encourage the EPA to use the Chesapeake Bay Program as a venue to promote and share successful examples across the watershed that demonstrate healthy farm practices, the community ethos that support them and the mechanisms that promote practice verification.**

The Citizens Advisory Committee is hopeful this new stage in Chesapeake Bay clean-up will move all our efforts beyond merely managing the loss of our national treasure to a model example of restoration that showcases how an innovative and accountable TMDL contributed to the next generation of a successful state-federal restoration partnership.

Sincerely,

James Elliott
Chair, Citizens Advisory Committee